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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 PHILIP RICCIARDI,

12 Plaintiff,

13 v.

14 MICHAEL R. LYNCH, et al.

15 Defendants,

16 -and-
17

18 HEWLETT-PACKARD COMPANY,

19 Nominal Defendant.
20

21 *[Caption continues on following page.]*
22

CASE NO. 12-CV-06003

**STIPULATION AND [PROPOSED]
ORDER CONSOLIDATING
SHAREHOLDER DERIVATIVE
ACTIONS AND SETTING SCHEDULE
FOR FILING OF A CONSOLIDATED
COMPLAINT AND FURTHER
PROCEEDINGS**

Judge: Hon. Charles R. Breyer
Complaint Filed: November 26, 2012

1 ERNESTO ESPINOZA,
2
3 Plaintiff,
4 v.
5 MICHAEL R. LYNCH, et al.
6 Defendants,
7 -and-
8 HEWLETT-PACKARD COMPANY,
9 Nominal Defendant.

CASE NO. 12-CV-06025

Judge: Hon. Charles R. Breyer
Complaint Filed: November 27, 2012

11 ANDREA BASCHERI, et al,
12 Plaintiffs,
13 v.
14 LEO APOTHEKER, et al.
15 Defendants,
16 -and-
17 HEWLETT-PACKARD COMPANY,
18 Nominal Defendant.

CASE NO. 12-CV-06091

Judge: Hon. Charles R. Breyer
Complaint Filed: November 30, 2012

20 MARTIN BERTISCH,
21 Plaintiff,
22 v.
23 LEO APOTHEKER, et al.
24 Defendants,
25 -and-
26 HEWLETT-PACKARD COMPANY,
27 Nominal Defendant.

CASE NO. 12-CV-06123

Judge: Hon. Charles R. Breyer
Complaint Filed: December 3, 2012

STIPULATION AND [PROPOSED] ORDER

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1 CITY OF BIRMINGHAM RETIREMENT
2 AND RELIEF SYSTEM,

3 Plaintiff,

4 v.

5 LEO APOTHEKER, et al.

6 Defendants,

7 -and-

8 HEWLETT-PACKARD COMPANY,

9 Nominal Defendant.
10

CASE NO. 12-CV-06416

Judge: Hon. Charles R. Breyer

Complaint Filed: December 18, 2012

11 JOSEPH TOLA,

12 Plaintiff,

13 v.

14 MICHAEL R. LYNCH, et al.

15 Defendants,

16 -and-

17 HEWLETT-PACKARD COMPANY,

18 Nominal Defendant.
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CASE NO. 12-CV-06423

Judge: Hon. Charles R. Breyer

Complaint Filed: December 18, 2012

1 STANLEY MORRICAL,
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3 Plaintiff,
4 v.
5 MARGARET C. WHITMAN, et al.
6 Defendants,
7 -and-
8 HEWLETT-PACKARD COMPANY,
9 Nominal Defendant.

CASE NO. 12-CV-06434

Judge: Hon. Charles R. Breyer
Complaint Filed: December 19, 2012

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STIPULATION AND [PROPOSED] ORDER

Page 4

1 WHEREAS, the following seven actions are now pending in the Northern District of
2 California (collectively, the “HP Derivative Actions”):

3 *Philip Riccardi v. Michael R. Lynch et al.*, Case No. 12-cv-06003-CRB

4 *Ernesto Espinoza v. Michael R. Lynch et al.*, Case No. 12-cv-06025-CRB

5 *Andrea Bascheri et al. v. Leo Apotheker et al.*, Case No. 12-cv-06091-CRB

6 *Martin Bertisch v. Leo Apotheker et al.*, Case No. 12-cv-06123-CRB

7
8 *City of Birmingham Retirement and Relief System v. Leo Apotheker et al.*,
9 Case No. 12-cv-06416-CRB

10 *Joseph Tola v. Michael R. Lynch et al.*, Case No. 12-cv-06423-CRB

11 *Stanley Morrical v. Margaret C. Whitman et al.*, Case No. 12-cv-06434-CRB;

12 WHEREAS, the seven HP Derivative Actions are styled as shareholder derivative actions
13 on behalf of Nominal Defendant Hewlett-Packard Company (“HP”), and each asserts claims that
14 arise from or relate to HP’s acquisition of Autonomy Corporation PLC in 2011;

15 WHEREAS, the Court determined by order entered January 3, 2013 in the earlier-filed
16 action entitled *Nicolow v. Hewlett-Packard Co.*, Case No. 12-cv-05980-CRB, that each of the
17 seven HP Derivative Actions identified above are related pursuant to Local Rule 3-12(a), and all
18 have been assigned to the Honorable Charles R. Breyer;¹

19 WHEREAS, the HP Derivative Actions identified above all arise out of the same
20 transactions and occurrences and involve the same or substantially similar issues of law and
21 facts, and, therefore, should be consolidated for all purposes under Fed. R. Civ. P. 42(a);

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23
24 ¹ The Court’s January 3, 2013 Order determined that ten pending actions are related
25 to the earliest-filed case, which is a putative securities class action captioned *Nicolow v. Hewlett-*
26 *Packard Co.*, Case No. 12-cv-05980-CRB (“*Nicolow*”). The pending actions related to *Nicolow*
27 consist of (i) the seven HP Derivative Actions that are the subject of this Stipulation; (ii) a
28 putative securities class action captioned *Pokoik v. Hewlett-Packard Co.*, Case No. 12-cv-06074-
CRB (“*Pokoik*”); (iii) an ERISA action captioned *Laffen v. Hewlett-Packard Co.*, Case No. 12-
cv-06199-CRB (“*Laffen*”); and (iv) an ERISA action captioned *Lustig v. Whitman*, Case No. 12-
cv-06410-CRB (“*Lustig*”). The *Nicolow*, *Pokoik*, *Laffen*, and *Lustig* actions are not styled as
shareholder derivative actions on behalf of HP and are not subject to this Stipulation.

1 WHEREAS, counsel for plaintiffs in the above referenced actions have met and
2 conferred and have agreed to a schedule for filing a motion for lead plaintiff and lead counsel;

3 WHEREAS, counsel for plaintiffs, nominal defendant HP, and the undersigned
4 defendants have met and conferred and have agreed to a schedule for filing a consolidated
5 complaint following the appointment of lead plaintiff and lead counsel;

6 WHEREAS, counsel for plaintiffs, nominal defendant HP, and the undersigned
7 defendants have met and conferred and have agreed that no answers, motions, or other responses
8 to the complaints ("Responses") need be filed in the HP Derivative Actions by HP or by any
9 other defendant until after the appointment of lead plaintiff and lead counsel and the filing of a
10 consolidated complaint or designation of an operative complaint, as provided below;

11 WHEREAS, counsel for plaintiffs, nominal defendant HP, and the undersigned
12 defendants have met and conferred and have agreed to a schedule setting a date for Responses to
13 the consolidated complaint and a briefing schedule for any motions filed in response to the
14 consolidated complaint unless otherwise ordered by the Court pursuant to motion or stipulation;

15 WHEREAS, counsel for nominal defendant HP has raised with plaintiffs' counsel issues
16 regarding a potential stay pending determination of motions to dismiss in related class actions
17 and staged briefing of motions in this action and will seek to meet and confer with the parties on
18 these subjects regarding a potential stipulation and/or motion schedule following the
19 appointment of lead plaintiff and lead counsel.

20 WHEREAS, the agreed-upon schedule is not for the purpose of delay, promotes judicial
21 efficiency, and will not cause prejudice to any party,

22 NOW, THEREFORE, IT IS STIPULATED AND AGREED by plaintiffs and all
23 defendants who have appeared in the HP Derivative Action, by and through their undersigned
24 respective counsel of record, as follows:

25 **I. CONSOLIDATION OF ACTIONS**

26 1. The seven HP Derivative Actions identified above are hereby consolidated for all
27 purposes, including pretrial proceedings, trial, and appeal.

2. The caption of these consolidated actions shall be "In re Hewlett-Packard Company Shareholder Derivative Litigation" and the files of these consolidated actions shall be maintained in one master file to be set by the Court. Thereafter, all seven of the original HP Derivative Action case files shall be closed.

3. Any other actions or claims filed in or removed or transferred to this Court after the date of this Stipulation that (i) are styled as shareholder derivative actions or claims brought on behalf of nominal defendant HP; and (ii) assert claims that arise from or relate to HP's acquisition of Autonomy Corporation PLC in 2011; and (iii) arise out of the same transactions and occurrences and involve the same or substantially similar issues of law and facts as the HP Derivative Actions, shall automatically be consolidated for all purposes, if and when they are brought to the Court's attention, together with *In re Hewlett-Packard Company Shareholder Derivative Litigation*, and the clerk shall close the file for any such later-filed actions.

4. Every pleading filed in the consolidated actions, or in any separate action included herein, shall bear the following caption:

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE HEWLETT-PACKARD COMPANY	MASTER DOCKET
SHAREHOLDER DERIVATIVE LITIGATION	NO.

THIS DOCUMENT RELATES TO:

5. When a pleading or other filing is intended to be applicable to all actions, the words "All Actions" shall appear immediately after or below the words "THIS DOCUMENT RELATES TO:" in the caption set forth above. When a pleading or other filing is intended to be applicable to less than all actions, the separate caption and docket number for each individual action to which the pleading is intended to be applicable shall appear immediately after or below the words "THIS DOCUMENT RELATES TO:" in the caption described above.

STIPULATION AND [PROPOSED] ORDER

6. When a case or claim that properly belongs as part of *In re Hewlett-Packard Company Shareholder Derivative Litigation* is filed in this Court or transferred or removed to this Court from another court and assigned to Judge Breyer, then following the filing of notice by any party to such action or by a party to *In re Hewlett-Packard Company Shareholder Derivative Litigation* in such other action and this consolidated action, and service of such notice upon all parties that have appeared in the affected actions, the clerk of this Court shall:

(a) Place a copy of this Order in the separate file for such action;

(b) Mail to the attorneys for the plaintiff(s) in the newly filed or transferred case a copy of this Order and direct that this Order be served upon or mailed to any new defendant(s) or their counsel in the newly filed or transferred case;

(c) Make an appropriate entry on the Master Docket. Counsel recognizes that this Court requests the assistance of counsel in calling to the attention of the clerk of this Court the filing or transfer of any case which properly might be consolidated as part of *In re Hewlett-Packard Company Shareholder Derivative Litigation*; and

(d) Close the separate file for such action.

7. Counsel for the Defendants signing this Stipulation hereby certify that: (i) service of process has previously been effected or waived with respect to their clients as identified on their signature lines below; or (ii) to the extent their clients have not otherwise been served with process or appeared, counsel for the Defendants signing this Stipulation are authorized to and hereby do waive service of process on behalf of their clients identified below, provided that such waiver of service and the entry into this Stipulation shall not be deemed a waiver of any rights or defenses of any kind, including but not limited to the ability to assert the defense of lack of personal jurisdiction, all of which rights and defenses are expressly reserved.

8. Filing of documents via the Court's ECF system shall be deemed to satisfy the service requirement as to all parties who have appeared in the action and whose counsel receive ECF notices electronically. All attorneys of record in *In re Hewlett-Packard Company Shareholder Derivative Litigation* must register for ECF and must file an appearance through the ECF system. Any attorneys who have been admitted *pro hac vice* in any of the HP Derivative

1 Actions shall also be deemed admitted in *In re Hewlett-Packard Company Shareholder*
 2 *Derivative Litigation* pursuant to the same conditions and requirements. No separate service of
 3 documents is required on any party who has appeared in the action but is not registered for ECF.

4 9. The terms of this Order shall not have the effect of making any person or entity a
 5 party to any action in which he, she, or it has not been named and properly served in accordance
 6 with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation and
 7 coordination ordered herein shall not constitute a waiver by any party of any claims in or
 8 defenses to any of the actions.

9 **II. SCHEDULE**

10 **A. Motions for Lead Plaintiff and Lead Counsel**

11 10. The following dates shall be in effect for motions for lead plaintiff/counsel in the
 12 consolidated action:

13 January 25, 2013: Last Day to File Motions For Lead Plaintiff and Lead Counsel

14 February 8, 2013: Last Day to File Oppositions to Motions For Lead
 15 Plaintiff and Lead Counsel

16 February 15, 2013: Last Day to File Replies To Any Opposition to Motions
 17 For Lead Plaintiff and Lead Counsel

18 March 1, 2013: Hearing on Motions for Lead Plaintiff and Lead Counsel

19 **B. Existing Complaints**

20 11. The parties named as defendants in the pending complaints in the HP Derivative
 21 Actions, including HP (collectively, "Defendants"), shall not be required to answer, file motions,
 22 or otherwise take any action in response to any of the complaints currently on file in any of the
 23 HP Derivative Actions. The time for such Defendants' answers, motions, or other responses
 24 shall be determined as specified in Paragraph 14 below, following the filing of a consolidated
 25 complaint or designation of an operative complaint, or as the Court hereafter may order. In the
 26 event additional actions are subsequently consolidated into *In re Hewlett-Packard Company*
 27 *Shareholder Derivative Litigation*, the parties named as defendants in the complaints in such
 28 additional actions shall not be required to answer, file motions, or otherwise take any action in

response to such complaints until the time specified in Paragraph 14 or as otherwise specified by the Court. No Defendant shall be deemed to have submitted to the jurisdiction of this Court or to have waived or otherwise relinquished any rights, arguments, or defenses of any kind by not filing an answer, motion or other response to any complaint in the consolidated action prior to the date specified in Paragraph 14 below or other order of the Court. Pursuant to Local Rule 6-1(a), this paragraph of this Stipulation shall be effective upon its filing with the Court.

C. Filing of a Consolidated Complaint

12. Lead plaintiff shall, within sixty (60) days following the entry and filing of the Court's order selecting a lead plaintiff and lead counsel, serve and file a consolidated amended complaint or designate a previously-filed complaint as the operative complaint (the "Consolidated Complaint"), which will supersede all existing complaints filed in the HP Derivative Actions and any other action that may be consolidated herewith. To the extent any defendant now named in any of the HP Derivative Actions is not named in the Consolidated Complaint, the claims against such defendant shall be deemed dismissed without prejudice. Service shall be effected with respect to any named defendant by serving the Consolidated Complaint on that defendant's counsel, unless such defendant has not previously been served or appeared, in which case service shall be affected according to the Federal Rules of Civil Procedure.

13. After the appointment of lead plaintiff and lead counsel, the parties shall submit to the Court any stipulations that may be reached relating to HP's suggestions of a stay and/or the staging of responses to the Consolidated Complaint within ten (10) days after the filing of the Consolidated Complaint. If the parties do not otherwise stipulate and any party seeks to alter or modify the schedule for Responses established in Paragraph 14, such party shall file an appropriate motion with the Court seeking such relief.

14. Unless the Court otherwise orders pursuant to stipulation, motion, or for any other reason, Defendants shall file their Responses to the Consolidated Complaint within sixty (60) days following the filing of the Consolidated Complaint (provided, however, that the time prescribed by the Federal Rules of Civil Procedure shall control to the extent those Rules provide

1 for a later response date as to any Defendant who has not been served, waived service, or
 2 appeared in the action at the time of this Stipulation). In the event that Defendants file any
 3 motions directed at the Consolidated Complaint, the opposition brief shall be filed within sixty
 4 (60) days of the motions and the reply briefs shall be filed within thirty (30) days thereafter.
 5 This stipulation is without prejudice to any party's right to move to continue any response(s) to
 6 the Consolidated Complaint pursuant to the federal and local rules.

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 9 **IT IS SO STIPULATED.**

10 DATED: February 14, 2013

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11 DATED: February 14, 2013

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Attorneys for Defendant KPMG LLP

11 I, Joseph E. Floren, am the ECF User whose ID and password are being used to file this
12 Stipulation And [Proposed] Order. In compliance with Local Rule 5-1(i)(3), I hereby attest that
13 each of the signatories identified above has concurred in this filing.

14 Executed this 14th day of February 2013 at San Francisco, California.

15 /s/ Joseph E. Floren
16 JOSEPH E. FLOREN

17
18
19 **ORDER**

20 Based on the foregoing stipulation of the parties, and good cause appearing,

21 **IT IS SO ORDERED.**

22
23 DATED: _____, 2013

24 THE HONORABLE CHARLES R. BREYER
25 JUDGE OF THE UNITED STATES DISTRICT COURT

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27 DB1/ 73146223.1

28
v
LAW OFFICES
COTCHETT, PITRE
& MCCARTHY, LLP
STIPULATION AND [PROPOSED] ORDER

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